

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

248D0565

SENATE TRANSPORTATION COMMITTEE

ENGROSSED NO. **HB1212** - 2/16/00

Introduced by: Representatives Young, Apa, and Napoli

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding dealer franchises to
2 include motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 37-5-5 be amended to read as follows:

5 37-5-5. If any person, firm, or corporation, or their successors, engaged in the business of
6 selling and retailing farm implements or machinery and repair parts for farm implements or
7 machinery, or in the business of selling and retailing industrial and construction equipment and
8 repair parts for industrial and construction equipment, or in the business of selling and retailing
9 office furniture, equipment, and supplies and repair parts for office furniture, equipment, and
10 supplies, or in the business of selling and retailing automobiles, trucks, ~~or motorcycles, boats,~~
11 ~~personal watercraft, all-terrain vehicles, or snowmobiles~~ or repair parts for automobiles, trucks,
12 ~~or motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles~~ enters into a
13 written contract evidenced by franchised agreement, sales agreement, dealer agreement, or
14 security agreement or other form of agreement or arrangement of like effect, the term, contract,
15 as used in §§ 37-5-5 to 37-5-9, inclusive, means any of the foregoing and their successors. If
16 such person, firm, or corporation, or their successors maintains a stock of parts or complete or

1 whole machines, or attachments with any wholesaler, manufacturer, or distributor of farm
2 implements or machinery or repair parts therefor, or industrial and construction equipment or
3 repair parts therefor, or office furniture, equipment, and supplies or repair parts therefor, or
4 automobiles~~or~~, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, or
5 snowmobiles, or repair parts therefor, and either the wholesaler, manufacturer, or distributor,
6 or their successors, or the retailer, or successor, desires to cancel or discontinue the contract,
7 such wholesaler, manufacturer, or distributor, or successor, shall pay to the retailer, or successor,
8 unless the retailer, or successor, should desire to keep the merchandise, a sum equal to one
9 hundred percent of the net cost of all current unused complete farm implements, machinery and
10 attachments, industrial and construction equipment and attachments, office furniture, equipment,
11 and supplies, and attachments, and automobiles~~and~~, trucks, motorcycles, boats, personal
12 watercraft, all-terrain vehicles, and snowmobiles, including transportation charges which have
13 been paid by the retailer and eighty-five percent of the current net prices on repair parts,
14 including superseded parts, listed in current price list or catalog which parts had previously been
15 purchased from the wholesaler, manufacturer, or distributor, or predecessor, and held by the
16 retailer on the date of the cancellation or discontinuance of the contract. The wholesaler,
17 manufacturer, or distributor, or successor, shall also pay the retailer a sum equal to five percent
18 of the current net price of all parts returned for the handling, packing and loading of the parts
19 back to the wholesaler, manufacturer, or distributor. Upon the payment of the sum equal to one
20 hundred percent of the net cost of the farm implements, machinery and attachments, industrial
21 and construction equipment and attachments, office furniture, equipment, and supplies, and
22 attachments, and automobiles~~and~~, trucks, motorcycles, boats, personal watercraft, all-terrain
23 vehicles, and snowmobiles, plus transportation charges and eighty-five percent of the current net
24 prices on repair parts, plus five percent handling and loading costs on repair parts only, plus
25 freight charges which have been paid by the retailer, or automobiles~~or~~, trucks, motorcycles,

1 boats, personal watercraft, all-terrain vehicles, or snowmobiles, plus freight charges, or repair
2 parts therefor, plus five percent handling and loading costs on repair parts only, the title to the
3 farm implements, farm machinery, industrial and construction equipment, office furniture,
4 equipment, and supplies, and repair parts, or automobiles, ~~or trucks,~~ motorcycles, boats, personal
5 watercraft, all-terrain vehicles, or snowmobiles, or parts therefor, shall pass to the manufacturer,
6 wholesaler, or distributor making the payment, and the manufacturer, wholesaler, or distributor,
7 is entitled to the possession of the farm implements, industrial and construction equipment, office
8 furniture, equipment, and supplies, or automobiles ~~or,~~ trucks, motorcycles, boats, personal
9 watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor.

10 Section 2. That § 37-5-7 be amended to read as follows:

11 37-5-7. The prices of farm implements, machinery, and repair parts therefor, and of industrial
12 and construction equipment and repair parts therefor, and of office furniture, equipment, and
13 supplies and repair parts therefor, and of automobiles, trucks, motorcycles, boats, personal
14 watercraft, all-terrain vehicles, or snowmobiles, and repair parts therefor, required to be paid to
15 any retail dealer as provided in § 37-5-5, shall be determined by taking one hundred percent of
16 the net cost on farm implements, machinery, and attachments, industrial and construction
17 equipment, and attachments, office furniture, equipment, and supplies, and attachments,
18 automobiles ~~and,~~ trucks, ~~and~~ motorcycles, boats, personal watercraft, all-terrain vehicles, and
19 snowmobiles, and eighty-five percent of the current net price of repair parts therefor as shown
20 upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the
21 time the contract is canceled or discontinued. For purposes of §§ 37-5-5 to 37-5-9, inclusive, if
22 any retailer, of farm implements or machinery or repair parts therefor, has actual proof of
23 purchase of any repair parts or other merchandise from any manufacturer, wholesaler, or
24 distributor, or its predecessor, the repair parts even though not currently listed in any price list
25 or catalog and all other merchandise, purchased within ten years of the dealership cancellation

or termination shall be repurchased at the original purchase price.

Section 3. That § 37-5-8 be amended to read as follows:

37-5-8. If any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts for farm machinery, and farm implements, or of industrial and construction equipment and repair parts for industrial and construction equipment, or of office furniture, equipment, and supplies and repair parts for office furniture, equipment, and supplies, or of automobiles, trucks, motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles, and repair parts therefor, or their successors, upon cancellation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, or their successor, fails or refuses to make payment to the dealer as is required by § 37-5-5, or refuses to supply farm machinery, farm implements, and repair parts for farm machinery and farm implements, or industrial and construction equipment, and repair parts for industrial and construction equipment, or of office furniture, equipment, and supplies and repair parts for office furniture, equipment, and supplies, or automobiles ~~or~~, trucks, ~~or~~ motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts therefor, to any retailer of the products, who may have a retail sales contract dated after July 1, 1969, in the case of contracts covering farm machinery, implements and attachments or automobiles and trucks or after July 1, 1970, in the case of contracts covering industrial and construction equipment and attachments or after July 1, 1995, in the case of contracts covering office furniture, equipment, and supplies, or after July 1, 1973, in the case of contracts covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft, all-terrain vehicles, or snowmobiles, or a contract with no expiration date or a continuing contract in force or effect on July 1, 1969, in the case of contracts covering farm machinery, implements and attachments or automobiles and trucks or in force and effect on July 1, 1970, in the case of contracts covering industrial and construction equipment and attachments, or in force and effect on July 1, 1995, in the case of contracts covering office

1 furniture, equipment, and supplies, or in force and effect on July 1, 1973, in the case of contracts
2 covering motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal
3 watercraft, all-terrain vehicles, or snowmobiles, with the manufacturer, wholesaler, or
4 distributor, the manufacturer, wholesaler, or distributor, or their successor, is liable in a civil
5 action to be brought by the retailer for one hundred percent of the net cost of the farm
6 implements, machinery and attachments, industrial and construction equipment and attachments,
7 office furniture, equipment, and supplies and attachments, automobiles and trucks, and
8 motorcycles, or after July 1, 2000, in the case of contracts covering boats, personal watercraft,
9 all-terrain vehicles, or snowmobiles, plus transportation charges which have been paid by the
10 retailer and eighty-five percent of the current net price of repair parts, plus five percent for
11 handling and loading plus freight charges which have been paid by the retailer.

12 Section 4. That § 37-5-9 be amended to read as follows:

13 37-5-9. In the event of the death of the retail dealer or majority stockholder in a corporation
14 operating a retail dealership in the business of selling and retailing farm implements or repair
15 parts for farm implements, or in the business of selling industrial and construction equipment or
16 repair parts therefor, or in the business of selling and retailing office furniture, equipment, and
17 supplies or repair parts therefor, or in the business of selling and retailing automobiles~~or,~~ trucks
18 ~~or,~~ motorcycles, boats, personal watercraft, all-terrain vehicles, or snowmobiles, or repair parts
19 therefor, the wholesaler, distributor, or manufacturer who supplied the merchandise, or its
20 successor, shall repurchase from the heir or heirs of the retail dealer or majority stockholder the
21 merchandise at a sum equal to one hundred percent of the net cost of all current unused complete
22 farm implements, machinery and attachments, industrial and construction equipment and
23 attachments, office furniture, equipment, and supplies and attachments, and automobiles~~and,~~
24 trucks, ~~and~~ motorcycles, boats, personal watercraft, all-terrain vehicles, and snowmobiles,
25 including transportation charges which have been paid by the retailer, and eighty-five percent of

1 the current net prices on repair parts, including superseded parts, listed in current price lists or
2 catalogues, plus a sum equal to five percent of the current net price of all parts returned for
3 handling, packing, and loading of the parts, unless the heir or heirs agree to continue to operate
4 the retail dealership. If the heir or heirs do not agree to continue to operate the retail dealership,
5 it is deemed a cancellation or discontinuance of contract by the retailer under the provisions of
6 § 37-5-5, and as such the heir or heirs may exercise any rights and privileges under §§ 37-5-5
7 to 37-5-9, inclusive.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 143

3 1/20/00 Referred to Judiciary.

4 1/26/00 House of Representatives Referred to Commerce.

5 2/3/00 Scheduled for Committee hearing on this date.

6 2/3/00 Commerce Do Pass, Passed, AYES 12, NAYS 0. H.J. 403

7 2/4/00 House of Representatives Deferred to another day. H.J. 433

8 2/7/00 House of Representatives Do Pass, Passed, AYES 65, NAYS 1. H.J. 459

9 2/8/00 First read in Senate and referred to Transportation. S.J. 360

10 2/15/00 Scheduled for Committee hearing on this date.

11 2/15/00 Transportation Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 491

12 2/15/00 Transportation Place on Consent Calendar.